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8 **UNITED STATES DISTRICT COURT**  
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10 **CENTRAL DISTRICT OF CALIFORNIA**

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12 UNICOLORS, INC., a California  
13 Corporation

14 Plaintiff,

15 vs.

16 RUE 21, INC., a Delaware Corporation;  
17 and DOES 1 through 20, inclusive,

18 Defendants.  
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Case No.: 2:16-cv-00431-MWF(MRWx)

**PROTECTIVE ORDER**

*Hon. Michael W. Fitzgerald Presiding*

*Referred to Hon. Michael R. Wilner*

1 On stipulation of the Parties, the Court enters a Protective Order in this matter  
2 as follows:

3 1. PURPOSES AND LIMITATIONS

4 Disclosure and discovery activity in this action are likely to involve production  
5 of confidential, proprietary, or private information for which special protection from  
6 public disclosure and from use for any purpose other than prosecuting this matter  
7 would be warranted. Accordingly, the parties have stipulated to and petitioned this  
8 Court to enter the following Stipulated Protective Order. The parties acknowledge  
9 that this Order does not confer blanket protections on all disclosures or responses to  
10 discovery and that the protection it affords extends only to the limited information  
11 or items that are entitled under the applicable legal principles to treatment as  
12 confidential. The parties have agreed that the terms of this Protective Order shall  
13 also apply to any future voluntary disclosures of confidential, proprietary, or private  
14 information. The parties reserve their rights to object to or withhold any information,  
15 including confidential, proprietary, or private information, on any other applicable  
16 grounds permitted by law, including third-party rights and relevancy.

17 1.1 Good Cause Statement: This action is likely to involve trade  
18 secrets, customer and pricing lists and other valuable research, development,  
19 commercial, financial and/or technical information for which special protection from  
20 public disclosure and from use for any purpose other than prosecution of this action  
21 is warranted. Such confidential materials and information consist of, among other  
22 things, confidential business or financial information, information regarding  
23 purchase and sale prices of fabric or garments by suppliers, manufacturers,  
24 importers, distributors or fashion retailers, information regarding business practices,  
25 information regarding the creation, purchase or sale of graphics used on textiles and  
26 garments, or other confidential commercial information (including information  
27 implicating privacy rights of third parties), information generally unavailable to the  
28 public, or which may be privileged or otherwise protected from disclosure under

1 state of federal rules, court rules, case decisions, or common law. Accordingly, to  
 2 expedite the flow of information, to facilitate the prompt resolution of disputes over  
 3 confidentiality of discovery materials, to adequately protect information the parties  
 4 are entitled to keep confidential, to ensure that the parties are permitted reasonable  
 5 necessary uses of such material in preparation for and in the conduct of trial, to  
 6 address their handling at the end of the litigation, and serve the ends of justice, a  
 7 protective order for such information is justified in this matter. It is the intent of the  
 8 parties that information will not be designated as confidential for tactical reasons and  
 9 that nothing be so designated without a good faith belief that it has been maintained  
 10 in a confidential, non-public manner, and there is good cause why it should not be  
 11 part of the public record of this case.

## 12 2. DEFINITIONS

13 2.1 Party: any party to this action, including all of its officers,  
 14 directors, employees, consultants, retained experts, and outside counsel (and their  
 15 support staff).

16 2.2 Disclosure or Discovery Material: all items or information,  
 17 regardless of the medium or manner generated, stored, or maintained (including,  
 18 among other things, testimony, transcripts, or tangible things), that are produced or  
 19 generated in disclosures or responses to discovery in this matter.

20 2.3 “Confidential” Information or Items: All information in whatever  
 21 form, such as oral, written, documentary, tangible, intangible, electronic, or digitized  
 22 now or hereafter in existence that:

23 a) derives independent economic value, actual or potential, from  
 24 not being generally known to, and not being readily ascertainable by proper means,  
 25 by other persons who can obtain economic value from its disclosure or use;

26 b) is the subject of efforts that are reasonable under the  
 27 circumstances to maintain its secrecy; and  
 28

1 c) is otherwise regarded by a party as being confidential, private,  
2 or proprietary in nature.

3 2.4 Receiving Party: a Party that receives Disclosure or Discovery  
4 Material from a Producing Party.

5 2.5 Producing Party: a Party or non-party that produces Disclosure  
6 or Discovery Material in this action.

7 2.6 Designating Party: a Party or non-party that designates  
8 information or items that it produces in disclosures or in responses to discovery as  
9 “CONFIDENTIAL.”

10 2.7 Protected Material: any Disclosure or Discovery Material that is  
11 designated as “CONFIDENTIAL.”

12 2.8 Expert: a person with specialized knowledge or experience in a  
13 matter pertinent to the litigation who has been retained by a Party or its counsel to  
14 serve as an expert witness or as a consultant in this action. This definition includes  
15 a professional jury or trial consultant retained in connection with this litigation. The  
16 expert witness or consultant may not be a past or a current employee of the Party  
17 (including any affiliates or related entities) adverse to the Party engaging the expert  
18 witness or consultant, or someone who at the time of retention is anticipated to  
19 become an employee of the Party (including any affiliates or related entities) adverse  
20 to the Party engaging the expert witness or consultant.

21 2.10 Professional Vendors: persons or entities that provide litigation  
22 support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or  
23 demonstrations; organizing, storing, or retrieving data in any form or medium; etc.)  
24 and their employees and subcontractors.

### 25 26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only  
28 Protected Material (as defined above), but also any information copied or extracted

therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in litigation or in other settings that might reveal Protected Material.

#### 4. DURATION

Even after the termination of this action, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

#### 5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or non-party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. A Designating Party must take care to designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that contains protected material. If only a portion or portions of the material on a page

1 qualifies for protection, the Producing Party also must clearly identify the protected  
2 portion(s) (e.g., by making appropriate markings in the margins).

3 A Party or Non-Party that makes original documents available for  
4 inspection need not designate them for protection until after the inspecting Party has  
5 indicated which documents it would like copied and produced. During the inspection  
6 and before the designation, all of the material made available for inspection shall be  
7 deemed “CONFIDENTIAL.” After the inspecting Party has identified the  
8 documents it wants copied and produced, the Producing Party must determine which  
9 documents, or portions thereof, qualify for protection under this Order. Then, before  
10 producing the specified documents, the Producing Party must affix the  
11 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a  
12 portion or portions of the material on a page qualifies for protection, the Producing  
13 Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
14 markings in the margins).

15 (b) for testimony given in depositions that the Designating Party  
16 identify the Disclosure or Discovery Material on the record, before the close of the  
17 deposition all protected testimony.

18 (c) for information produced in some form other than documentary and  
19 for any other tangible items, that the Producing Party affix in a prominent place on  
20 the exterior of the container or containers in which the information is stored the  
21 legend “CONFIDENTIAL.” If only a portion or portions of the information warrants  
22 protection, the Producing Party, to the extent practicable, shall identify the protected  
23 portion(s).

24 5.3 Inadvertent Failures to Designate. If timely corrected, an  
25 inadvertent failure to designate qualified information or items as  
26 “CONFIDENTIAL” does not, standing alone, waive the Designating Party’s right to  
27 secure protection under this Order for such material. If material is appropriately  
28 designated as “CONFIDENTIAL” after the material was initially produced, the

1 Receiving Party, on timely notification of the designation, must make reasonable  
2 efforts to assure that the material is treated in accordance with the provisions of this  
3 Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Unless a prompt challenge to a  
6 Designating Party's confidentiality designation is necessary to avoid foreseeable  
7 substantial unfairness, unnecessary economic burdens, or a later significant  
8 disruption or delay of the litigation, a Party does not waive its right to challenge a  
9 confidentiality designation by electing not to mount a challenge promptly after the  
10 original designation is disclosed. Any challenge to a confidentiality designation  
11 must comply in full with the joint filing format described in Local Rule 37 for all  
12 discovery motions.

13 6.2 Meet and Confer. A Party that elects to initiate a challenge to a  
14 Designating Party's confidentiality designation must do so in good faith and must  
15 begin the process by conferring with counsel for the Designating Party in writing. In  
16 conferring, the challenging Party must explain the basis for its belief that the  
17 confidentiality designation was not proper and must give the Designating Party an  
18 opportunity to review the designated material, to reconsider the circumstances, and,  
19 if no change in designation is offered, to explain the basis for the chosen designation.  
20 A challenging Party may proceed to the next stage of the challenge process only if it  
21 has engaged in this meet-and-confer process first.

22 6.3 Court Intervention. A Party that elects to press a challenge to a  
23 confidentiality designation after considering the justification offered by the  
24 Designating Party may file and serve a motion that identifies the challenged material  
25 and sets forth in detail the basis for the challenge. Each such motion must be  
26 accompanied by a competent declaration that affirms that the movant has complied  
27 with the meet-and-confer requirements imposed in the preceding paragraph and that  
28 sets forth with specificity the justification for the confidentiality designation that was



1 given by the Designating Party in the meet-and-confer dialogue. The parties agree  
 2 that a confidentiality designation shall not create a presumption in favor of such  
 3 confidentiality designation, and that the Court shall decide the issue as such.

4 Until the Court rules on the challenge, all parties shall continue to afford  
 5 the material in question the level of protection to which it is entitled under the  
 6 Producing Party's designation.

## 7 8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material  
 10 that is disclosed or produced by another Party or by a non-party in connection with  
 11 this case only for prosecuting, defending, or attempting to settle this litigation. Such  
 12 Protected Material may be disclosed only to the categories of persons and under the  
 13 conditions described in this Order. When the litigation has been terminated, a  
 14 Receiving Party must comply with the provisions of section 11, below (FINAL  
 15 DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party  
 17 at a location and in a secure manner that ensures that access is limited to the persons  
 18 authorized under this Order.

19 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
 20 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
 21 Receiving Party may disclose any information or item designated  
 22 "CONFIDENTIAL" only to:

23 (a) the Receiving Party's outside counsel, as well as  
 24 employees of said outside counsel to whom it is reasonably necessary to disclose the  
 25 information for this litigation;

26 (b) Principals, members, officers and directors of the  
 27 Receiving Party;  
 28



1 (c) Other employees of the Receiving Party to whom  
 2 disclosure is reasonably necessary for this litigation and who are bound by internal  
 3 confidentiality obligations as part of their employment or who have signed the  
 4 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (d) Experts (as defined in this Order) of the Receiving Party to  
 6 whom disclosure is reasonably necessary for this litigation and who have signed the  
 7 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (e) the Court personnel assigned to this litigation;

9 (f) court reporters, their staffs, and professional vendors to  
 10 whom disclosure is reasonably necessary for this litigation and who have signed the  
 11 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (g) during their depositions, witnesses in the action to whom  
 13 disclosure is reasonably necessary and who have signed the “Acknowledgment and  
 14 Agreement to Be Bound” (Exhibit A). Pages of transcribed deposition testimony or  
 15 exhibits to depositions that reveal Protected Material must be separately bound by  
 16 the court reporter and may not be disclosed to anyone except as permitted under this  
 17 Stipulated Protective Order; and

18 (h) the author of the document or the original source of the  
 19 information.

20  
 21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
 22 PRODUCED IN OTHER LITIGATION

23 If a Receiving Party is served with a subpoena or an order issued in other  
 24 litigation that would compel disclosure of any Discovery Material, the Receiving  
 25 Party must so notify the Designating Party, in writing immediately and in no event  
 26 more than five business days after receiving the subpoena or order. Such notification  
 27 must include a copy of the subpoena or court order. The Receiving Party also must  
 28 immediately inform in writing the Party who caused the subpoena or order to issue

1 in the other litigation that some or all of the material covered by the subpoena or  
2 order is the subject of this Protective Order. In addition, the Receiving Party must  
3 deliver a copy of this Stipulated Protective Order promptly to the Party in the other  
4 action that caused the subpoena or order to issue.

5 The purpose of imposing these duties is to alert the interested parties to the  
6 existence of this Protective Order and to afford the Designating Party in this case an  
7 opportunity to try to protect its confidentiality interests in the court from which the  
8 subpoena or order issued.

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10 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

11 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
12 Protected Material to any person or in any circumstance not authorized under this  
13 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
14 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
15 to retrieve all copies of the Protected Material, (c) inform the person or persons to  
16 whom unauthorized disclosures were made of all the terms of this Order, and (d)  
17 request such person or persons to execute the “Acknowledgment and Agreement to  
18 Be Bound” that is attached hereto as Exhibit A.

19  
20 10. FILING PROTECTED MATERIAL

21 A Party that seeks to file under seal any Protected Material must comply with  
22 Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a  
23 court order authorizing the sealing of the specific Protected Material at issue. If a  
24 Party's request to file Protected Material under seal is denied by the court, then the  
25 Receiving Party may file the information in the public record unless otherwise  
26 instructed by the court.

27  
28 11. FINAL DISPOSITION

1 Unless otherwise ordered or agreed to in writing by the Producing Party,  
2 within 60 days after the final termination of this action, each Receiving Party must  
3 return all Protected Material to the Producing Party or destroy the Protected Material.  
4 As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
5 compilations, summaries or any other form of reproducing or capturing any of the  
6 Protected Material. Notwithstanding this provision, counsel are entitled to retain an  
7 archival copy of all pleadings, motion papers, transcripts, legal memoranda,  
8 correspondence or attorney work product, even if such materials contain Protected  
9 Material. Any such archival copies that contain or constitute Protected Material  
10 remain subject to this Protective Order as set forth in Section 4 (DURATION),  
11 above.

12  
13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right  
15 of any person to seek its modification in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of  
17 this Protective Order no Party waives any right it otherwise would have to object to  
18 disclosing or producing any information or item on any ground not addressed in this  
19 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
20 ground to use in evidence of any of the material covered by this Protective Order.

21 12.3 Inadvertent Production of Privileged Documents. If a Party,  
22 through inadvertence, produces any document or information that it believes is  
23 immune from discovery pursuant to an attorney-client privilege, the work product  
24 privilege, or any other privilege, such production shall not be deemed a waiver of  
25 any privilege, and the Producing Party may give written notice to the Receiving Party  
26 that the document or information produced is deemed privileged and that return of  
27 the document or information is requested. Upon receipt of such notice, the Receiving  
28 Party shall immediately gather the original and all copies of the document or

1 information of which the Receiving Party is aware, in addition to any abstracts,  
2 summaries, or descriptions thereof, and shall immediately return the original and all  
3 such copies to the Producing Party. Nothing stated herein shall preclude a Party from  
4 challenging an assertion by the other Party of privilege or confidentiality.  
5

6 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**  
7

8 Dated: May 3, 2016

By: 

Honorable Michael R. Wilner  
United States District Court  
Magistrate Judge

**EXHIBIT A****ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print full name], of \_\_\_\_\_ [print full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California in the case of *Unicolors, Inc. v. Rue 21, Inc., et al.*, 2:16-cv-00431 MWF(MRWx). I agree to comply with and to be bound by all of the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print full name] of \_\_\_\_\_ [print full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_